

Consumer Class Action Litigation and Mass Arbitration

Skadden

Skadden's Consumer Class Action Litigation and Mass Arbitration Group defends leading businesses in significant, high-stakes litigation and mass arbitrations. The practice brings together preeminent lawyers who have pioneered winning defense strategies for class actions, multidistrict litigation and mass arbitrations. Our team has deep experience in developing, implementing and enforcing arbitration programs as an alternative to class actions that preserve the hallmarks of consumer- and employee-friendly individual arbitration while addressing the evolving mass arbitration environment.

Our team has secured landmark results that have shaped the law favorably for businesses. We have advised and defended companies across industries, including retail, consumer products, financial services, media and entertainment, automotive, sports, gaming, food and beverage, hospitality, technology, transportation, health care, insurance, fintech, life sciences and telecommunications.

We represent clients across the full spectrum of consumer disputes, including but not limited to:

- General consumer protection claims.
- Digital privacy and wiretapping claims, including matters implicating pixels, session replay technology, geolocation and cookies.
- Tariff pass-through litigation.
- Pricing and fee disputes, including those related to reference pricing, promotional practices, alleged perpetual sales and algorithmic and surveillance pricing.
- Automatic renewal and subscription services challenges.
- Advertising and marketing claims.
- Product labeling and efficacy disputes.
- Data breach and cybersecurity cases.
- Product safety and alleged defect claims.
- Biometric privacy disputes.
- Telemarketing, pre-recorded calls, text messaging and email subject line claims.

Our sustained record of success and depth of experience in these areas have made us the go-to practice for numerous clients facing consumer class actions and mass arbitrations and seeking to mitigate risk.

Consumer Class Action Litigation

Skadden has been the architect of creative arguments and approaches that shut down threatened and filed class actions. We routinely prevent the filing of threatened claims, secure early dismissals, obtain plaintiffs' voluntary withdrawals of claims, compel individual arbitration, defeat class certification, negotiate favorable resolutions and prevail on dispositive motions, including motions to dismiss and for summary judgment.

Skadden consistently secures dismissals of putative class actions before any discovery or protracted proceedings begin and before plaintiffs can leverage the costs and burdens associated with class actions. Notably, our reputation and deep knowledge in this area have often led to plaintiffs voluntarily dismissing their claims. Our attorneys have exceptionally strong experience developing and enforcing arbitration agreements and have won decisions compelling arbitration in trial and appellate courts across the United States.

We also have been at the forefront of impactful cases that have shaped the law in this area. Prior to joining Skadden, members of the practice were part of the teams that prevailed before the U.S. Supreme Court in:

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- *AT&T Mobility LLC v. Concepcion*, which first established that the Federal Arbitration Act (FAA) protects agreements to arbitrate that waive class actions, and in several post-*Concepcion* cases interpreting the FAA; and
- *Spokeo, Inc. v. Robins*, in which the Court held that the standing requirements of Article III of the Constitution prevent plaintiffs from suing in federal court for alleged violations of statutes unless they can show that they were harmed in real and concrete ways.

In addition, members of the practice drafted key *amicus* briefs on behalf of leading industry groups in significant Supreme Court cases (including prior to joining Skadden), such as:

- *Facebook, Inc. v. Duguid*, in which the Court narrowed the scope of the Telephone Consumer Protection Act's (TCPA's) automated calling provision and dramatically reduced the wave of TCPA consumer class actions facing businesses across industries;
- *TransUnion LLC v. Ramirez*, which reaffirmed *Spokeo*'s core holding that concrete, real-world harm is required in all cases in federal court; and
- *Coinbase, Inc. v. Bielski*, which held that defendants are entitled to an automatic stay of further district court proceedings pending appeal of the denial of a motion to compel arbitration.

All of these cases remain the foundation of critically important bodies of decisional law.

Additionally, our team has significant experience defending companies in multidistrict litigation and effectively advocating for our clients before the Judicial Panel on Multidistrict Litigation. And where class actions intersect with other matters — including state attorneys general defense and investigations, government investigations and enforcement actions, cybersecurity and data privacy, and securities litigation — we are skilled at coordinating and defending parallel proceedings in collaboration with our colleagues across Skadden's relevant practice groups. Our cross-border experience extends to participation in governmental consultations and law reform initiatives, including the provision of input to the U.K. government in connection with its consideration of a new consumer class actions regime.

Mass Arbitration Defense

Skadden is a leader in the defense of mass arbitrations. Before the mass arbitration model first took shape, attorneys on our team identified the potential for the plaintiffs' bar to exploit arbitration agreements and worked closely with companies to mitigate risk. We

contain these matters, as well as the associated burdens and exposure for our clients, in a variety of ways that include:

- Strategically revising arbitration agreements to protect their enforceability and against their exploitation.
- Proactively engaging with claimants' counsel.
- Effectively and efficiently defending arbitrations on the merits at scale.
- Exposing the deficiencies in the claims and claimant pools.
- Leveraging our depth of knowledge, reputation and experience to drive favorable outcomes such as voluntary withdrawals and negotiated resolutions where appropriate.

Often, the claims in mass arbitration merely serve as a vehicle for claimants' counsel to seek payments untethered to the merits of any claims or the legitimacy of any claimants. We address the full range of claims that are invoked in these matters, ranging from pricing and fees, product labeling and customer communications to privacy and alleged wiretapping and dark patterns, and beyond. Our team has led the charge in successfully addressing mass arbitration tactics in courts across the country and protecting clients and consumers from abuse of the arbitration process. We have also successfully addressed the tactics of lead generators, prompting the withdrawal of campaigns targeting our clients.

Skadden's lawyers have been at the center of pivotal cases that have helped redefine mass arbitration. Our team, along with colleagues in our Supreme Court and Appellate Practice:

- Secured a sweeping, first-of-its-kind victory in the U.S. Court of Appeals for the Seventh Circuit in *Wallrich et al. v. Samsung Electronics America, Inc., et al.*, a case that disrupted the mass arbitration model. The court reinforced the obligation of each claimant to demonstrate the existence of an arbitration agreement with the company and provided a path for businesses to extricate themselves from oppressive arbitration administrative fees associated with thousands of claims and seek relief in court.
- Building upon *Wallrich*, obtained an affirmance of a district court order that once again disrupted efforts to perpetuate improper mass arbitration tactics.

We have successfully defended our clients' arbitration agreements and mass arbitration provisions from enforceability challenges and exposed potentially serious consumer protection issues inherent in the current model. Through our team's efforts, we have made companies hard targets for these tactics and reduced the associated risks considerably.

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Thought Leadership and Recognition

In addition to leading groundbreaking matters and results, leaders of the practice have authored comprehensive papers on behalf of the U.S. Chamber of Commerce Institute for Legal Reform that have been cited in briefs before the U.S. Supreme Court and serve as key resources in the ongoing legal and policy debate surrounding mass arbitration. These works, including “[Private Power, Public Harm: The Coercive Dynamics of Mass Arbitration](#)” and “[Mass Arbitration Shakedown: Coercing Unjustified Settlements](#),” offer in-depth analysis of the issues shaping this rapidly evolving area of the law.

Skadden has been named repeatedly to The BTI Consulting Group’s Fearsome Foursome — the top four firms that clients “don’t want to litigate against” — and is ranked among the top 1% of all firms for class action litigation. The firm has been repeatedly named a Litigation Department of the Year: Class Action Finalist by the *New York Law Journal*. The practice is led by *Chambers*-ranked lawyers who are recognized for their depth of experience in class action defense and mass arbitration.

Members of the group have been recognized by *The American Lawyer*, *Benchmark Litigation*, *Chambers USA*, *The Legal 500*, *The Legal Intelligencer*, *Law360*, BTI, Thomson Reuters and *Lawdragon* 500 Leading Litigators, and have been named among TCPAWorld’s Best TCPA Attorneys in the Nation.